

## ***FWP COMMISSION AGENDA ITEM COVER SHEET***

**Meeting**                      **Date:**                      January                      13,                      2011

**Division:** Parks

**Agenda Item:**                      Upper                      Madison                      River                      Easement                      Settlement                      (R3)

**Action Needed:** Final Approval

**Time Needed on Agenda:** 10 minutes

**Background:** Montana Fish, Wildlife & Parks (FWP) proposes an exchange of access easements for the purpose of ensuring permanent public recreational access to a section of the upper Madison River located 25 miles south of Ennis. The proposal arises from a draft settlement agreement with landowners who are concerned about a 52-year-old 'road easement' granted to FWP across a portion of their land. The landowners contend that the easement is no longer valid, and proposed to have it vacated. Under the settlement, FWP would relinquish the existing road easement and, in exchange, the landowners would grant a permanent easement for nonmotorized public recreational access along this same 500-yard shoreline of the Madison River. (For convenience, this transaction is referred to as an exchange of easements, although the new 'easement' to be acquired by FWP would actually be multiple easements granted by adjoining landowners.)

**Public Involvement Process & Results:** FWP distributed an Environmental Assessment on the Upper Madison River Proposed Exchange of Public Access Easements on November 5, 2010, and received 3 comments regarding the proposed action. Two of the comments supported the proposal, and one comment expressed concern about the loss of road access. On December 6, FWP issued a Decision Notice, recommending the exchange of easements. FWP pointed out that no road exists at the site and that FWP has no intention of developing a road in the riparian zone of the Madison River.

**Alternatives and Analysis:** Under the 'no-action' alternative, FWP would retain the 1958 road easement. However the affected landowners have discussed legal action to vacate the easement, and there is no guarantee that FWP would prevail. Under the settlement agreement, the public would continue to use the existing nonmotorized access through BLM and DNRC to the reach riverbank section where the new easement will be in force. The new 500-yard-long easement would then permanently allow nonmotorized public use within a 40-foot-wide corridor along the river bank. This arrangement would secure a public access route on and through the only privately owned land on the east bank of the Madison River in a six mile section extending north from the BLM's Palisades Recreation Area.

**Agency Recommendation & Rationale:** FWP recommends that the Commission authorize FWP to enact the proposed exchange of easements, as presented to the public in the environmental assessment and described above. The settlement agreement meets reasonable access needs and

ensures permanent public nonmotorized recreational access along this popular section of the upper Madison River.

**Proposed Motion:** I move that the Commission authorize the Department to enter into the proposed settlement agreement and conclude the Upper Madison River Exchange of Public Access Easements.